

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

EDWIN R. BANKS,	)	
	)	
Plaintiff,	)	Civil Action No. 5:20-CV-0565-LCB
	)	
v.	)	
	)	
ALEX M. AZAR, II, in his official	)	
capacity as Secretary of the	)	
U.S. Department of Health and	)	
Human Services,	)	
	)	
Defendant.	)	
	)	

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SECOND NOTICE OF SUPPLEMENTAL PERSUASIVE AUTHORITY

On July 22, 2020, the Central District of California issued a decision in *Pehoviack v. Azar*, CV 20-00661-DOC-KES, which is attached as Exhibit A. As in this action, the *Pehoviack* case involved a plaintiff with glioblastoma multiforme challenging HHS's denial of Medicare coverage for tumor treatment field therapy. Ex. A at 1-2. The *Pehoviack* court dismissed the action, finding that the plaintiff lacked standing under Article III to bring the action because the plaintiff was not financially liable for the treatment; the supplier was. *Id.* at 5.

In this action, Plaintiff is not financially liable to pay for the tumor treatment field therapy at issue in the challenged claims. AR at 1262, ECF No. 38. Defendant did not raise any issue with Plaintiff's Article III standing in its cross-

motion/response brief. Because, however, whether Plaintiff has standing implicates this Court's subject-matter jurisdiction, Defendant provides this notice of supplemental authority. *See Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005) ("Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims.") (quotations and citations omitted).

Respectfully submitted,

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